

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2052 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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DAHYABHAI SHIVRAMBHAI PATEL

Versus

DY. EXECUTIVE ENGINEER

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Appearance:

Mr. K.M.Sheth for MR GM AMIN for Petitioner  
M/S TRIVEDI & GUPTA for Respondent No. 1  
Mr. S.T.Mehta, AGP for respondent no. 4.

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CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision: 24/08/98

ORAL JUDGEMENT

The learned counsel for the petitioner presses this petition only to take him as a clerk on the work-charged establishment from 3.6.1981 till 22.11.91. The petitioner was appointed as a clerk on the daily wages basis from 3.6.1981 in the office of the respondent no.1 Gujarat Water Resources Development Corporation. On

22.11.1981, the petitioner was given appointment as clerk on the basis of 29 days order and he was continued till 20.3.1985. Thereafter, he was allowed to continue as clerk as a daily wager. Other persons whose names were called from Employment Exchange were given appointment as clerk on 28.11.86 though the petitioner was also registered as an unemployed person in the Employment Exchange. Other persons who were given work-charged appointments vide order dated 28.11.86 were junior to the petitioner. Though other persons who were appointed by an order dated 28.11.86 were not possessing requisite qualifications and were appointed subsequent to the petitioner and were given orders of work-charged clerks.

3. One Mr.V.R. Dave has filed an affidavit in reply on behalf of the respondent nos.1,2 and 3. The respondents have not disputed the facts alleged by the petitioner in the petition. In para-9, it has been asserted that services of those persons have been regularised in the respondent Corporation after obtaining proper sanction from the Superintending Engineer (P), Gandhinagar. As the petitioner was not given the appointment after following proper selection procedure, hence, his name was not considered. However, the name of the petitioner was recommended by the Executive Engineer, Palanpur Division to the Superintending Engineer (P), Gandhinagar by his letter dated 18.7.86 for the purpose of appointing the petitioner on work-charged establishment. In view of the provisions of circular dated 5.8.85, the name of the petitioner was recommended by the Executive Engineer, Palanpur Division to the Superintending Engineer (P), Gandhinagar for appointing the petitioner on work-charged establishment.

4. Thus, it appears that the petitioner's five years experience was considered by the department and recommended his name vide letter dated 18.7.86. Even then the name of the petitioner was not considered or declared for giving him appointment on work-charged establishment. Hence, he is entitled for the benefit from the date on which his name was recommended. As his name was recommended for appointment on 18.7.86, as others have already been given work-charge appointment, hence the petitioner is also entitled to the benefit of work-charged from 18.7.86 till the date when he was actually given work till 22.11.91 when he was given appointment as clerk on work-charged establishment and he is also entitled for inclusion of his name in the seniority list in accordance with law.

5. Accordingly, the petition is allowed to

the extent that the respondents are directed to treat the petitioner as clerk on work-charged establishment from 18.7.86 to 22.11.91 with all consequential benefits. The respondents are also directed to include his name in the seniority list in accordance with law and give him all other benefits available to similarly situated persons. Rule is made absolute accordingly with no order as to costs.

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